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ABSTRACT

An examination of recent cases involving press releases and public relations writers indicates that courts have devised several ways, including the use of guidelines set out by the Ollman (from "Ollman v. Evans") four-factor test, to make the distinction between fact and opinion. The four-factor test helps courts to assess (1) whether the statement in question has a precise core of meaning for which a consensus exists, or whether it is ambiguous; (2) the degree to which the statement is verifiable; (3) the context in which the statement is made including the use of cautionary language and the tone of the whole; and (4) the broader context in which the statement appears. Because press releases have still been subject to libel suits, such as in "Parks v. Steinbrenner," where the court ruled that the press release did not set forth adequate statement of facts to support the opinions within the release, authors of releases are advised to try to avoid libel suits by disclosing the facts on which the opinions are based. Additionally, writers can choose words with ambiguous meanings, use rhetorical hyperbole, and make tongue-in-cheek statements. They can also preface statements with "I think," and similar phrases, and surround questionable words with quotation marks: "rapist," "lied." Despite criticism of the Ollman four-factor test, writers are advised to apply the test to their own writing to determine whether fact is discernable from opinion. (JC)

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Public Relations Writers and the Press Release: Constitutional Protection Provides 'Relatively' Safe Haven from Libel Verdicts

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PUBLIC RELATIONS WRITERS AND THE PRESS RELEASE:

CONSTITUTIONAL PROTECTION PROVIDE 'RELATIVELY' SAFE HAVEN

FROM LIBEL VERDICTS

Recent court rulings suggest that press releases, especially those that contain opinion or commentary, can precipitate successful libel actions. Today, the public relations writer is afforded constitutional protection for most opinionated statements as the focus of libel litigation has shifted from its common law origins to First Amendment considerations.[1] Protection is traceable, however, to the common law privilege of fair comment which protected the right of every citizen critic, including the media opinion writer, to fairly express opinions and to comment upon all matters of public interest and general concern.[2] To be fair and reasonable such comment had to be free of malice under the common law, i.e., must not be made solely for the purpose of causing harm to the person about whom the comment was made, and it must be a statement of opinion and not a misstatement of fact.[3]

While the common law privilege protecting opinionated statements was largely constitutionalized by the Sullivan "actual malice" rule in 1964,[4] the real impetus for the shift away from the fair comment privilege came ten years later when the Supreme Court in Gertz v. Robert Welch, Inc.[5] said categorically, in a statement not necessary to the decision:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.[6]

This declaration, while removing the qualifications and/or conditions of the common law privilege, appears to raise the troublesome fact-opinion

distinction to the level of constitutionality without affording an analytical approach for the lower courts to follow.[7]

Furthermore, in a 1984 case, Ollman v. Evans,[8] the U.S. Court of Appeals, District of Columbia Circuit, attempted to provide a set of guidelines by delineating "four factors" to be used in assessing whether the average reader would view a publication as a statement of fact or an expression of opinion.

This study will present a brief overview of both the common law and constitutional privileges protecting the expression of opinion. The various modes of analysis used in making the distinction between statements of fact and expression of opinion, including the D.C. Circuit's Ollman approach, will also be examined. In addition, numerous recent cases from 1984 forward will be reviewed to indicate problems inherent in making the fact-opinion distinction for public relations writers. The goal is to clarify for the public relations writer the scope of the privilege and protection afforded to comments about public issues and other matters of public concern.

The Common Law Privilege

Underlying the fair comment privilege was the assumption that all criticism, no matter how foolish, should be protected and that the public was entitled to such unfettered, widely disseminated opinion.[9] Two types of expression of opinion are generally recognized by the courts. The first type is the so-called "pure type," which occurs when the public relations writer states the facts on which he bases his opinion. The pure type also occurs when both parties to the communication know the facts or assume their existence and the comment is clearly based on those assumed facts. The second or "mixed type" of expression, is mixed in that it is apparently based

on facts that have not been stated or cannot be assumed to exist by the parties to the communication. It is only the pure type of expression of opinion to which the common law privilege of fair comment has been held to apply.[10]

The fair comment privilege requires that the courts make a distinction, therefore, between statements of opinion and statements of fact--whether directly stated or assumed.[11] As one authority has noted, however, the courts and commentators have not always agreed upon how such distinctions should be made.[12]

The Constitutional Privilege

The Supreme Court in Sullivan and its progeny has generally broadened protection afforded to the public relations writer under the "actual malice" rule, but he Court has failed to provide the lower courts adequate guidance in regard to the fact-opinion distinction. Though disagreement exists, the general view is that the constitutional protection afforded expression of opinion under the Sullivan rule has extended the old common law doctrine of fair comment,[13] incorporated it into the constitutional privilege,[14] or at least left unsettled the question of whether the constitutional rule wholly supplanted the common law privilege.[15]

In any event, it was the Supreme Court's dictum in Gertz which has had the greatest impact upon the fact-opinion distinction. The Restatement (Second) of Torts, for example, notes that the Supreme Court's statement in Gertz that "under the First Amendment there is no such thing as a false idea" indicates that an expression of opinion cannot be the basis of a libel action involving public communication on a matter of public concern.[16] Though private communications on private matters would fall beyond the

constitutional privilege,[17] the logic of the constitutional principle would appear to apply to all expression of opinion based on either disclosed or assumed facts.[18]

One commentator has noted, however, that after articulating the fact-opinion distinction, the Gertz Court made no effort to apply the distinction before deciding the case on other grounds.[19] Indeed, the Supreme Court has been "virtually silent" concerning the fact-opinion distinction, leaving the lower courts to devise their own approaches.[20] In only two cases has the Court expressly addressed the characterization of statements as fact or opinion,[21] but both cases were decided upon other grounds. Thus, despite the fact that the Gertz statement is clearly dicta, a majority of the federal circuit courts have accepted the statement as controlling law.[22] Some thirty-two states, plus the District of Columbia and Guam, also have recognized a constitutional privilege protecting expression of opinion.[23]

The OLLMAN Fact-Opinion Factors

Noting that the Supreme Court's "implicit command" in Gertz imposed upon both state and federal courts the duty of distinguishing fact from opinion in order "to provide opinions with the requisite, absolute First Amendment protection,"[24] the Ollman court, in one of the most comprehensive decisions to date involving the fact-opinion distinction, set out and amplified a four-step approach to making such a distinction.

The case was spawned by a syndicated column written by Rowland Evans and Robert Novak concerning the appointment of a Marxist professor, Bertell Ollman, to head the Department of Government at the University of Maryland. The Court of Appeals for the District of Columbia Circuit, sitting en banc,

reversed the decision of a three-judge panel, holding that the column was entitled to absolute First Amendment protection as expression of opinion, based upon a four-part test for determining whether a statement is one of fact or opinion;[25] and finally the U.S. Supreme Court in May of 1985 denied a petition for writ of certiorari to review the en banc decision.[26]

The 1984 opinion is more than sixty pages and involves seven separate opinions involving one or more of the eleven federal judges. Two aspects of the case are especially pertinent: first, what was the nature of the Evans and Novak column which resulted in the libel action, and secondly, what were the four factors set out by the court, and how were they applied in determining the fact-opinion distinction?

The column at issue, published in the Washington Post under the headline "The Marxist Professor's Intentions," opened with this:

> What is in danger of becoming a frivolous debate over the appointment of a Marxist to head the university of Maryland's department of a Marxist to head the University of Maryland's department of politics and government has so far ignored this unspoken concern within the academic community: the avowed desire of many political activists to use higher education for indoctrination.[27]

The columnists also quoted an unnamed source as saying: "Ollman has no status within the profession, but is a pure and simple activist."[28]

Ollman's complaint, while not asserting that any quotations were inaccurate, alleged that the column was "totally false and defamatory" and that it denied his reputation as a scholar and portrayed him as a "political activist" who sought to use his classroom for ulterior purposes. Acknowledging that because of the "richness and diversity of language" it was difficult, even impossible, to lay down a "bright-line" rule to distinguish between assertions of fact, and expressions of opinion,[29] the court's

majority nevertheless set out a four-part test to be used in assessing whether the average reader would view such statements as fact or opinion.

First, the court said, the "common usage or meaning of the specific language of the challenged statement" should be analyzed to determine whether "the statement has a precise core of meaning for which a consensus of understanding exists, or conversely, whether the statement is indefinite and ambiguous."[30]

Second, courts "should consider the degree to which the statements are verifiable--is the statement objectively capable of proof or disproof?"[31] The court noted that the reason for such an inquiry is simple: "a reader cannot rationally view an unverifiable statement as conveying actual facts."[32]

Third, courts must examine the context in which the statement is made. The statement must be taken as part of a whole, including tone and the use of cautionary language. The court explained that the full context of the statement--the entire column or broadcast--must be considered "inasmuch as other, unchallenged language surrounding the allegedly defamatory statement will influence the average reader's readiness to infer that a particular statement has factual content."[33]

A fourth factor, the court said is consideration of "the broader context in which the statement appears." Different types of writing or commentary have widely varying social conventions which signal to the reader the likelihood of a statement's being either fact or opinion."[34]

Such a four-factor analysis, the court noted, should not be undertaken "in rigid lock-step fashion." Indeed, a logical starting point in applying the fact-opinion analysis might be the broad social context or setting within

which the statement appears (the fourth step) and the language surrounding the challenged statements (the third factor).[35]

In regard to the context of the Evans and Novak column, the court's majority decided that a "reasonable reader" who pursued such a column on the editorial page or op-ed page should be fully aware that the statements found there are not "hard" news and would be predisposed to regard what is found there to be opinion.[36] In analyzing specific allegations in the column, the court noted that the statement concerning Ollman's "status within the profession" was the "most troublesome" of all those alleged by Ollman to be defamatory. Still the court found that a "confluence of factors" led to the conclusion that even those statements were protected opinion.[37] In finding that all the statements in the column were protected opinion, the court cautioned: "Of course, we do not hold that any statement on an editorial or Op-Ed page is constitutionally privileged opinion."[38]

Public Relations Writers and Press Releases

While there have been only a handful of reported cases involving libel challenges to press releases written by public relations writers, at least one of them has resulted in a verdict unfavorable to writers.

In Parks v. Steinbrenner,[39] the New York Supreme Court ruled that a major league umpire has a cause of action for libel after the owner of the New York Yankees baseball team disseminated a press release which stated the owner's opinion that a major league umpire, Dallas Parks, was a "scab" who "has had it in" for the Yankees and that he had "misjudged" plays. The court noted that the press release did not set forth adequate statement of facts to support the opinions within the release.

The press release also espoused the view that the umpire "doesn't measure up" to standards set by the American League and that the umpire's decision to throw two Yankees players out of a ballgame was "ludicrous."[40] In reaching its decision, the court found that the only statement of fact in the press release was with regard to the umpire expelling two Yankee players from a baseball game. The court said: "This fact by itself does not in any way support the opinions proffered; defendant in his statement sets forth no facts which would support his opinion that plaintiff was incompetent and biased."[41]

On the other hand, another recent ruling in Karp v. Hill and Knowlton[42] extended constitutional protection to opinionated statements in a public relations firm's press release. The press release prepared by the public relations firm of Hill & Knowlton commented upon a court decision in an ongoing court battle between Steven I. Karp, a former senior vice president with Buckingham Corporation, and importer and distributor of wines and liquors, and the Buckingham Corporation which claimed Karp had surreptitiously agreed with two of Buckingham's suppliers to form a new corporation to distribute their products independently of Buckingham and that Karp had misappropriated confidential information and trade secrets from Buckingham.[43] The sentence at issue in the press release stated that Buckingham Corporation viewed the ruling by the U.S. Court of Appeals, Second Circuit, in a case involving Karp and Buckingham Corporation as supporting "our claims that Mr. Karp defrauded Buckingham and that substantial relief should be granted."[44]

Although the court acknowledged that distinguishing fact from opinion is often difficult, it relied heavily on the four-factor test from Ollman in ruling that the statement at issue was opinion and was thus entitled to

constitutional protection.[45] The court also found that the statement was a "comment on an ongoing court battle" and would likely be construed as such by the average reader of the trade publication in which the press release appeared.[46] Furthermore, the court noted that, in a broader context, spirited debate is anticipated whether disputes are over labor or an ongoing court battle. The court added that the statement was a "defensive salvo" and that Karp's new company was free to take part in this spirited debate.[47] Finally, the court said that the "statement in question could never by proven right or wrong, much less 'true' or 'false'," and thus constituted non-actionable opinion.[48]

In another case in which constitutional protection was afforded to opinionated statements, King v. Globe Newspaper Company,[49] a mock press release was published by the Boston Globe newspaper under the byline of an opinion columnist employed by the newspaper. The satirical column contained a mock press release allegedly written by the governor of Massachusetts which discussed the governor's problems with his press secretary and with the press and which named the governor as his own press secretary.

The court ruled that the contents of the column, which appeared on the newspaper's Op-Ed page and which were written by the newspaper's political columnist, were pure opinion and entitled to constitutional protection. In reaching its decision, the court said that the ordinary reader would notice that the column appears under the title of the author's feature column and under the author's byline, "both of which suggest that the 'press release' was not actually a press release, as that term is commonly understood."[50] In addition, the court said that the opening two words of the column--"Good riddance"--would disabuse any lingering tendency to read the column literally upon encountering the contents of the "press release" as it develops;

furthermore, the court said that even though the author writes politics rather than humor, the "tongue-in-cheek and sometimes droll quality . . . emerging from the language, format, and tone . . . clearly serves to express opinion."[51]

It is important to note that only one of the three cases utilized the four-factor test to distinguish fact and opinion enunciated in Ollman. The chief reason that the test has not been used in cases involving public relations writers is that few have been decided since the Ollman case outlined the four factors in 1984. However, public relations writers should expect the Ollman four-factor test to play a key role in future cases involving press releases where allegedly libelous statements are disputed. For example, in three cases involving rulings extending constitutionally protected opinion in a news magazine, in statements on an editorial page, and on comments in an opinion column, the Ollman four-factor test was heavily relied upon in making the crucial fact-opinion distinction. In those cases the strongest endorsement was given to utilization of the test, but since Ollman was decided numerous courts have used the guidelines set forth.

In one of those rulings favorable to the news media, the U.S. Court of Appeals, Eighth Circuit, in a 1986 case, Janklow v. Newsweek,[52] ruled as constitutionally protected statements of opinion an allegedly defamatory statement, which, in relating details of an alleged "feud" between the governor of South Dakota and an Indian activist, was imprecise and unverifiable, was presented in a forum where spirited writing should have been expected, and involved criticism of a public official's motives and intentions.

The Janklow case expanded upon the four factors enunciated in Ollman and also endorsed them. In expanding upon them, the court first said that the

Ollman factors "must be considered together, that no solitary criterion can be dispositive, and that ultimately the decision whether a statement is fact or opinion must be based on all the circumstances involved."[53] The court also said that in deciding whether a statement is fact or opinion, a court "must consider what we will call the 'public context' in which the statement was made."[54] The court noted that "here we have criticism of the conduct of a state attorney general who now serves as governor, as well as questions about the actions of three other governors . . . all involving an issue of national importance, the treatment of Indian people.[55] Thus, the court concluded that few other discussions of public concern could make a greater claim for First Amendment protection.

Easily one of the strongest endorsements of the Ollman four-factor test came in another 1986 case, El Paso Times v. Kerr,[56] in which the court granted protection to a statement published in an article that appeared on an editorial page. That statement, which, in discussing a government attorney's conduct during a criminal trial, said that "the burden to prove guilt is not excuse for cheating."[57] The court examined the "full context" of the publication in reaching its decision and asserted that the Ollman court has "utilized a logical and workable four-factor test."[58]

Finally, the Ohio Supreme Court recently reversed a decision which ruled statements in a column were libelous. Initially, though, in Milkovich v. News-Herald,[59] statements in a sports column were ruled libelous which, in commenting upon litigation to lift athletic sanctions imposed against a high school wrestling coach and team, asserted that the coach and a school superintendent had "lied" at a court hearing. The court decided that the coach and superintendent were neither public figures nor public officials, that the statements were factual assertions that implied perjury, and that

nothing "precautions the reader that the author's statements are merely his considered opinions."[60] In reversing Milkovich, the Ohio Supreme Court in Scott v. News-Herald[61] examined the Ollman factors with respect to the former decision and came up with a new name for the Ollman four-factor test--"a totality of circumstances test."

Conclusions

An examination of recent cases involving press releases and public relations writers indicates that courts have devised a variety of ways, including use of the guidelines set out by the Ollman four-factor test, in making the distinction between fact and opinion. In the absence of a controlling U. S. Supreme Court decision, however, Ollman's four-factor test consolidates ways to arrive at a distinction between fact and opinion, and the Ollman decision could provide guidance to courts which struggle in making the fact-opinion distinction.

But while Ollman consolidates factors to be used in making the fact-opinion distinction, the courts frequently draw upon some, but not all, of the factors. What results is often a less-than-comprehensive test and a less-than-searching analysis of the fact-opinion distinction. With the fact-opinion distinction left to the vagaries of lower courts, public relations writers thus may comment at some degree of risk although recent decisions suggest that press releases authored by public relations writers are a "relatively" safe haven from libel verdicts.

Still, criticism of the Ollman four-factor test has come from majority opinions which acknowledge the difficulty in formulating a "bright-line" test,[62] dissenting opinions which question the lack of specific guidance in the Ollman test,[63] and law review articles.[64] One law review article, for

example, suggests that approaches courts have taken in making the distinction vary greatly, ranging from judgment calls to careful examination of the "totality of circumstances" surrounding the publication.[65] One judge in Benjamin v. Cowles Publishing,[66] a case involving disputed statements in an opinion column, criticized one Ollman factor, warning that readers may not read a statement in context since readers may not scrutinize every work or read the entire article. Other criticisms of the Ollman four-factor test have come in dissents in Janklow in which it was noted that the "tawdry tactics of judicial semantics" do not yield predictability and that the definition of opinion is "extremely broad and elastic,"[67] by dissenters in Scott who have said the Ollman tests is "unreliable, patently arbitrary, vapid, and meaningless,"[68] "malleable and spongy,"[69] and that "all the four factors amount to no more than a geyser spouting judicial steam, fog, and mist."[70] Finally, a dissenter in Scott has said that the "fourth factor" really adds nothing to the other factors . . . and submerges further into the morass of a Serbonian bog those seeking to distinguish a statement of fact from one of opinion in any future case."[71]

Regardless of the criticism, the cases involving press releases, as well as other cases cited, do provide some guidance as to how public relations writers can maximize the likelihood of their work being perceived as opinion and thus have a greater chance of being afforded constitutional protection. Perhaps the key is that public relations writers should disclose the facts upon which their opinions are based. Public relations writers also should choose words that have several possible meanings, or words that are imprecise, words that mean different things to different people at different times in different situations. Writers may also enhance their chances of

staying free of libel suits by using rhetorical hyperbole, tongue-in-cheek statements, and writing with a droll quality.[72]

Furthermore, cautionary language--in headlines, titles, and text--seems to help in identifying statements as opinion. In El Paso, for example, the headline "Federal System Less Than Just" contained opinion and informed readers that the content of the article included opinion. Even such phrases as "In my opinion" and "I think" can be helpful to the public relations writer. In addition, surrounding words with quotation marks--"rapist," "swindle," "lied," "cheating"--also tends to announce to readers that assertions are opinions. Certainly, the public relations writer should avoid using words or phrases that impute criminal activity, if at all possible. But, if such words are to be used, surrounding them in quotation marks and verifying them for accuracy are especially important. An excellent rule of thumb is for public relations writers who are in doubt over what statements constitute opinion to employ as many precautionary measures as possible and to apply the four factors from Ollman to their writing: Carefully study the meaning of the language used, try to ascertain whether statements are capable of proof or disproof, review the context of the language surrounding the expressions of opinion, and determine whether labeling as an opinion or commentary is necessary as a determination is made about the larger context in which the statements are used. Such preventive measures could go a long way toward making press releases an even safer haven from libel verdicts.

NOTES

1. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). For further discussion of the "actual malice" rule as it applies to the protection of opinion, see text accompanying notes 13-23, infra.

2. M. Newell, THE LAW OF DEFAMATION, LIBEL AND SLANDER sec. 1 (1890). See also, Note, The Fact-Opinion Distinction in First Amendment Libel Law: The Need for a Bright-Line Rule, 72 GEORGETOWN L. J. 1817, 1819 (August 1984).

3. RESTATEMENT (SECOND) OF TORTS sec. 566, Comment a (1977) hereinafter cited as RESTATEMENT.

4. 376 U.S. at 279-80.

5. 418 U.S. 323 (1974).

6. Ibid at 339-40. See also, RESTATEMENT sec. 566, Comment c.

7. See, e.g., Note, The fact-opinion Distinction, supra note 2.

8. 750 F.2d 970, 11 Media L. Rptr. 1433 (D.C. Cir. 1984).

9. RESTATEMENT OF TORTS sec. 606, Comment c and d (1938).

10. RESTATEMENT sec. 566, Comment b.

11. Veeder, Freedom of Public Discussion, HARV L. REV. 413, 419 (1910). See also, Note, The Fact-Opinion Distinction, supra note 2, at 1819-20.

12. See generally, Titus, Statement of Fact Versus Statements of Opinion--A Spurious Dispute in Fair Comment, 15 VAND. L. REV. 1203, 1221 (1962). See also, W. Prosser, HANDBOOK OF THE LAW OF TORTS 820 (4th ed. 1971).

13. See e.g., Note, The Fact-Opinion Distinction, supra note 2, at 1821.

14. D. Gillmor & J. Barron, MASS COMMUNICATION LAW 266 (4th ed. 1984).

15. Sack, LIBEL, SLANDER, AND RELATED PROBLEMS 154 (1980).

16. RESTATEMENT sec 566, Comment c.

17. Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 53 U.S.L.W. 4866 (June 26, 1985).

18. RESTATEMENT sec. 566, Comment c.

19. Note, The Fact-Opinion Distinction, supra note 2, at 1822.

20. Ibid at 1824, citing Ollman v. Evans, 713 F.2d at 844 (Robinson, C.J., concurring).

21. Greenbelt Cooperative Publishing Ass'n. v. Bresler, 398 U.S. 6 (1970); Old Dominion Branch No. 496, National Ass'n of Letter Carriers v. Austin, 418 U.S. 264 (1974).

22. Eight of the twelve circuits had accepted the Gertz statement as controlling in reported cases through December 6, 1984. See Ollman v. Evans, 750 F.2d at 974 n.6.

23. The fourth annual fifty-state survey of libel and privacy law, which covered all developments through 1984, reported new cases in nine jurisdictions in 1984 alone. The survey also indicated that 12 other states continue to utilize the common law doctrine under the rubric of either "fair comment" or "public interest involving public figures. That number had dropped from 15 reported in the 1983 survey. See, Issue Status Summary LDRC 50-STATE SURVEY 767-70 (Libel Defense Resource Center, New York, 1984).

24. 750 F.2d 975.

25. Ibid at 970.

26. 105 S.Ct. 2662.

27. 750 F.2d at 972.

28. Ibid at 972.

29. Ibid at 977-78.

30. Ibid at 979.

31. Ibid.

32. Ibid at 981.

33. Ibid at 979.

34. Ibid.

35. Ibid at 980.

36. Ibid at 989-87.

37. Ibid at 989-90.

38. Ibid at 987.

39. Parks v. Steinbrenner, 12 Media L. Rptr. 2199 (N.Y. S.Ct. 1986).

40. Ibid.

41. Ibid at 2200.

42. Karp v. Hill and Knowlton, 12 Media L. Rptr. 2092 (D.C. N.Y. 1986).

43. Ibid at 2093.

44. Ibid.

45. Ibid at 2096.

46. Ibid.

47. Ibid.

48. Ibid.

49. King v. Globe Newspaper Company, 12 Media L. Rptr. 2361 (Mass. Sup. Ct. 1986).

50. Ibid at 2372.

51. Ibid.

52. Janklow v. Newsweek, 12 Media L. Rptr. 1961 (8th Cir. 1986).

53. Ibid at 1962.

54. Ibid at 1963.

55. Ibid at 1964.

56. El Paso Times v. Kerr, 13 Media L. Rptr. 1049 (Texas Ct. App. 1986).

57. Ibid.

58. Ibid at 1050.

59. Milkovich v. News-Herald, 11 Media L. Rptr. (Ohio 1984).

60. Ibid at 1603.

61. Scott v. News-Herald, 13 Media L. Rptr. 1241 (Ohio Sup. Ct. 1986).

62. 12 Media L. Rptr. 1962; 11 Media L. Rptr. 1439; 13 Media L. Rptr. 1245-46.

63. 13 Media L. Rptr. 1254-63; 11 Media L. Rptr. 148 7-94 (Wald J., Edwards, J., and Scalia, J., all dissenting in part).

64. L. Moll, Defamation--Actionable Statement of Fact Versus Privileged Opinion: Ollman v. Evans, 34 KAN. L. REV. 367, 377 (1985); D. Becker, Structuring Defamation Law to Eliminate the Fact-Opinion Determination: A Critique of Ollman v. Evans 71 IOWA L. REV. 913 (1986).

65. Moll, op cit.

66. Benjamin v. Cowles Publishing Co., 20 Media L. Rptr. 1970 (Wash. App. 1984).

67. 12 Media L. Rptr. at 1967.

68. 13 Media L. Rptr. at 1262.

69. Ibid at 1260.

70. Ibid at 1261.

71. Ibid at 1260.

72. 12 Media L. Rptr. at 2372.